

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

Charles Fisher as representative of a class      )  
of similarly situated persons, and                )  
**and on behalf of the PRISM Plan for            )**  
**Represented Employees of ABB, Inc. and     )**  
Ronald Tussey, Timothy Hendron and          )  
Timothy Pinnell as representatives of a        )  
class of similarly situated persons,            )  
**and on behalf of the PRISM Plan for        )**  
**Employees of ABB, Inc.,                        )**  
  )  
Plaintiffs;                                        )  
  )  
v.    )      Cause No: 2:06-CV-04305 NKL  
  )  
  )  
ABB, Inc., John W. Cutler, Jr., Pension      )  
Review Committee of ABB, Inc., Pension      )  
& Thrift Management Group of ABB, Inc.    )  
Employee Benefits Committee of ABB,        )  
Inc., Fidelity Management Trust Company,   )  
and Fidelity Management & Research Co.    )  
  )  
Defendants.                                        )

**JOINT RESPONSE TO ORDER OF MAY 21, 2009**

The parties in accordance with the Order of May 21, 2009 (Doc. 377) state that the following motions are pending before the Court:

Plaintiffs' Motions Pending:

	<b>Plaintiffs' Motions Filed</b>	<b>ECF #</b>
<b>Motion</b>	<b>Plaintiffs' Motion for Partial Summary Judgment</b>	<b>257</b>
	Suggestions of Law in Support of Plaintiffs' Motion for Summary Judgment	258
Related Filings	ABB Defendants' Suggestions of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment	314

	<b>Plaintiffs' Motions Filed</b>	<b>ECF #</b>
	Fidelity Defendants' Suggestions in Opposition to Plaintiffs' Motion for Summary Judgment	321
	Plaintiffs' Reply Suggestions of Law in Response to Fidelity Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment	337
	Plaintiffs' Reply Suggestions of Law in Response to ABB Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment	338
<b>Motion</b>	<b>Plaintiffs' Motion to Strike Defendants' Untimely Disclosures</b>	<b>299</b>
Related Filings	Fidelity's Suggestions of Law in Opposition to Plaintiffs' Motion to Strike Allegedly Untimely Disclosures	330
	ABB Defendants' Suggestions of Law in Opposition to Plaintiffs' Suggestions of Law in Support of Their Motion to Strike	331
	Plaintiffs' Reply in Support Plaintiffs' Motion to Strike	366
	Fidelity's Surreply Suggestions of Law in Opposition to Plaintiffs' Motion to Strike Allegedly Untimely Disclosures	370
<b>Motion</b>	<b>Plaintiffs' Motion to Strike Fidelity Defendants' Reply Brief</b>	<b>364</b>
	Plaintiffs' Suggestions of Law in Support of Their Motion to Strike	365
Related Filings	Fidelity Defendants' Suggestions in Opposition to Plaintiffs' Motion to Strike Fidelity Defendants' Reply Brief	371

ABB Defendants' Filings:

	<b>ABB Motion Filed</b>	<b>ECF #</b>
<b>Motion</b>	<b>Motion to Strike Expert Reports and Testimony of David J. Witz</b>	<b>272</b>
related filings	ABB's Suggestions of Law in Support of Motion to Strike Expert Reports and Testimony of David J. Witz	273
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike Expert Reports and Testimony of David J. Witz	306
	Reply Suggestions of Law in Support of Motion to Preclude Plaintiffs' Expert Witness David J. Witz from Testifying at Trial, filed on behalf of Fidelity and ABB Defendants	344

	<b>ABB Motion Filed</b>	<b>ECF #</b>
<b>Motion</b>	<b>Motion to Strike Expert Reports and Testimony of Paul Kampner</b>	274
related filings	ABB's Suggestions of Law in Support of Motion to Strike Expert Reports and Testimony of Paul Kampner	275
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike Expert Reports and Testimony of Paul Kampner	302
	Reply Suggestions of Law in Support of Motion to Preclude Plaintiffs' Expert Witness Paul Kampner from Testifying at Trial, filed on behalf of Fidelity and ABB Defendants	353
<b>Motion</b>	<b>Motion to Strike Expert Reports and Testimony of Albert Otto</b>	276
related filings	ABB's Suggestions of Law in Support of Motion to Strike Expert Reports and Testimony of Albert Otto	277
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike Expert Reports and Testimony of Albert Otto	305
	Reply Suggestions of Law in Support of Motion to Preclude Plaintiffs' Expert Witness Albert Otto from Testifying at Trial, filed on behalf of Fidelity and ABB Defendants	341
<b>Motion</b>	<b>Motion to Join Fidelity's Motion to Exclude Expert Ross M. Miller from Testifying at Trial (<i>unopposed</i>)</b>	278
related filings	Fidelity's Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial	262
	Fidelity's Suggestions of Law in Support of Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial	263
	ABB's Motion to Join Fidelity's Reply Suggestions in Support of Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial ( <i>unopposed</i> )	340
	Fidelity's Reply Suggestions Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial	346
<b>Motion</b>	<b>Motion to Join Fidelity's Motion to Exclude Expert Edward O'Neal from Testifying at Trial (<i>unopposed</i>)</b>	279
related filings	Fidelity's Motion to Exclude Expert Edward O'Neal from Testifying at Trial	260
	Fidelity's Suggestions of Law in Support of Motion to Exclude Expert Edward O'Neal	261
	ABB's Motion to Join Fidelity's Reply Suggestions in Support of Motion to Exclude Expert Edward O'Neal ( <i>unopposed</i> )	342
	Fidelity's Reply Suggestions Motion to Exclude Expert Edward O'Neal from Testifying at Trial	355
<b>Motion</b>	<b>Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.</b>	280

	<b>ABB Motion Filed</b>	<b>ECF #</b>
related filings	ABB's Suggestions of Law in Support of Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	281
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	300
	ABB's Reply Suggestions of Law in Support of Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	343
<b>Motion</b>	<b>Motion for Summary Judgment</b>	284
related filings	ABB's Suggestions of Law in Support of Motion for Summary Judgment	285
	Affidavit of Jack Cutler in Support of Motion for Summary Judgment	286
	Affidavit of Catherine Cugell in Support of Motion for Summary Judgment	287
	Affidavit of Carol Story in Support of Motion for Summary Judgment	288
	Affidavit of Laura Hughes in Support of Motion for Summary Judgment (with exhibits)	289
	Supplemental Table of Contents and Table of Authorities	290
	Certificate of Service	291
	Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment	307
	Notice of Plaintiffs' Appendices of Exhibits	309
	Notice of Plaintiffs' Appendices of Exhibits	310
	Notice of Plaintiffs' Appendices of Exhibits	311
	Notice of Plaintiffs' Appendices of Exhibits	312
	Notice of Plaintiffs' Appendices of Exhibits	313
	ABB's Reply Suggestions of Law in Support of Motion for Summary Judgment (with Attachments: Declaration of Jeffrey Sturgeon and Exhibits)	339
	Plaintiffs' Notice of Supplemental Authority	332
	ABB's Response to Plaintiffs' Notice of Supplemental Authority re: Gallus	380
<b>Motion</b>	<b>Motion to Strike Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment and to Deem Facts in ABB's Motion for Summary Judgment Admitted</b>	347
related filings	ABB's Suggestions of Law in Support of Motion to Strike Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment and to Deem Facts in ABB's Motion for Summary Judgment Admitted	350
	Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment	307
	ABB's Suggestions of Law in Support of Motion for Summary Judgment	285
	Plaintiffs' Combined Suggestions of Law in Opposition to Fidelity Defendants' and ABB Defendants' Motions to Deem Admitted	372

	<b>ABB Motion Filed</b>	<b>ECF #</b>
<b>Motion</b>	<b>Motion to Amend/Correct Suggestions (with Attached Errata)</b>	376
related filings	ABB's Suggestions of Law in Support of Motion to Strike Witz	273
	ABB's Suggestions of Law in Support of Motion to Strike Otto	277
	ABB's Suggestions of Law in Support of Motion to Strike Pomerantz	281
	ABB's Suggestions of Law in Support of Motion for Summary Judgment	285
	ABB's Suggestions of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment	314
	ABB's Reply Suggestions of Law in Support of Motion for Summary Judgment (with Attachments: Declaration of Jeffrey Sturgeon and Exhibits)	339
	ABB's Reply Suggestions of Law in Support of Motion to Strike Pomerantz	343
	ABB's Suggestions of Law in Support of Motion to Strike and Deem Admitted Facts	350

Fidelity Defendants' Filings:

	<b>Fidelity Defendants' Motion Filed</b>	<b>ECF#</b>
<b>Motion</b>	<b>Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Edward S. O'Neal from Testifying at Trial</b>	260
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Edward S. O'Neal from Testifying at Trial	261
	Plaintiffs' Response to Fidelity's Motion to Exclude Plaintiffs' Expert Edward O'Neal from Testifying at Trial	304
	Reply Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Edward S. O'Neal from Testifying at Trial	355
<b>Motion</b>	<b>Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Ross M. Miller from Testifying at Trial</b>	262
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Ross M. Miller from Testifying at Trial	263
	Plaintiffs' Response to ABB and Fidelity's Motion to Exclude Plaintiffs' Expert Ross Miller	303
	Reply Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Ross M. Miller from Testifying at Trial	346

	<b>Fidelity Defendants' Motion Filed</b>	<b>ECF#</b>
<b>Motion</b>	<b>Fidelity Defendants' Motion to Exclude Improper Testimony of David J. Witz</b>	264
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Exclude Improper Testimony of David J. Witz	265
	Plaintiffs' Opposition to ABB and Fidelity Defendants' Motion to Preclude David Witz	306
	Joint Reply Suggestions of Law in Support of Defendants' Motions to Exclude Testimony of David J. Witz	344
<b>Motion</b>	<b>Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Paul Kampner from Testifying at Trial</b>	266
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Paul Kampner from Testifying at Trial	267
	Plaintiffs' Response to ABB and Fidelity's Motion to Exclude Plaintiffs' Expert Paul Kampner	302
	Joint Reply Suggestions of Law in Support of Defendants' Motion to Preclude Plaintiffs' Expert Paul Kampner from Testifying at Trial	353
<b>Motion</b>	<b>Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Albert J. Otto from Testifying at Trial</b>	268
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Albert J. Otto from Testifying at Trial	269
	Plaintiffs' Opposition to ABB and Fidelity Defendants' Motion to Preclude Albert Otto	305
	Joint Reply Suggestions of Law in Support of Defendants' Motions to Preclude Plaintiffs' Expert Albert J. Otto from Testifying at Trial	341
<b>Motion</b>	<b>Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Steve Pomerantz from Testifying at Trial</b>	270
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Steve Pomerantz from Testifying at Trial	271
	Plaintiffs' Opposition to Defendants' Motion to Exclude Plaintiffs' Expert Steve Pomerantz	300
	Reply Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Steve Pomerantz from Testifying at Trial	351
<b>Motion</b>	<b>Fidelity Defendants' Motion for Summary Judgment</b>	282
related filings	Suggestions of Law in Support of Fidelity Defendants' Motion for Summary Judgment	283
	Plaintiffs' Suggestions in Opposition to Fidelity Defendants' Motion for Summary Judgment	308
	Plaintiffs' Notice of Supplemental Authority in Support of Their Suggestions in Opposition to Defendants' Motions for Summary	332

	<b>Fidelity Defendants' Motion Filed</b>	<b>ECF#</b>
	Judgment	
	Reply Suggestions in Further Support of Fidelity Defendants' Motion for Summary Judgment	354
	Fidelity Defendants' Response to Notice of Supplemental Authority Regarding <i>Gallus v. Ameriprise Financial</i>	374
<b>Motion</b>	<b>Fidelity Defendants' Motion to Deem Admitted Facts Contained in Their Motion for Summary Judgment</b>	348
related filings	Fidelity Defendants' Suggestions of Law in Support of Motion to Deem Admitted Facts Contained in Fidelity Defendants' Motion for Summary Judgment	349
	Combined Opposition to Fidelity Defendants' and ABB Defendants' Motions to Deem Admitted	372
	Reply due May 29, 2009	
<b>Motion</b>	<b>Fidelity's Motion to Correct Fidelity Suggestions in Support of Motion for Summary Judgment, Suggestions in Opposition to Plaintiffs' Motion for Partial Summary Judgment and Reply Suggestions in Support of Motion for Summary Judgment and Suggestions in Support</b>	373
	Response due June 1, 2009	
<b>Motion</b>	<b>Fidelity Defendants' Motion to Correct Fidelity's Daubert Suggestions and Suggestions in Support</b>	381
	Response due June 5, 2009	

Third Party Filings:

	<b>Filings by Third Parties</b>	<b>ECF #</b>
<b>Motion</b>	<b>Motion to Intervene and to Challenge Confidentiality Designations, and Suggestions in Support (Filed by International Paper)</b>	296
Related Filings	Fidelity Defendants' Response to International Paper's Motion to Intervene and Challenge Confidentiality Designations	301
	Plaintiffs' Response to International Paper's Motion to Intervene and Challenge Confidentiality Designations	327
	Fidelity Defendants' Response to Plaintiffs' Response to International Paper's Motion to Intervene	367
	International Paper's Reply Suggestions in Support of Motion to Intervene and to Challenge Confidentiality Designations	362

	<b>Filings by Third Parties</b>	<b>ECF #</b>
<b>Motion</b>	<b>Albert J. Otto's Motion to Intervene and Respond to International Paper's Motion to Intervene and Challenge Confidentiality Designations</b>	<b>325</b>
Related Filings	Plaintiffs' Response to Albert Otto's Motion to Intervene and Respond to International Paper's Motion to Intervene and Challenge Confidentiality Designations	363

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed on this 22nd day of May, 2009 and will be delivered electronically by the CM/ECF system to the following:

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